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October 26, 2009

ENTERED
Office of Proceedings

OCT 26 2009

Part of
Public Record

E-File

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Re: STB Finance Docket No. 35302, Bell Oil Terminal, Inc. v. BNSF
Railway Company

Dear Acting Secretary Quinlan:

Attached for E-filing is the Answer of BNSF Railway Company to the
Complaint filed by Bell Oil Terminal, Inc.

If you have any questions, please contact me.

Sincerely yours,



Karl Morell

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35302

**BELL OIL TERMINAL, INC.
v.
BNSF RAILWAY COMPANY**

**COMPLAINT UNDER 49 U.S.C. 11103(b) FOR THE INSTALLATION AND OPERATION
OF A SWITCH CONNECTION**

ANSWER OF BNSF RAILWAY COMPANY

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**Attorneys for:
BNSF Railway Company**

Dated: October 26, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35302

BELL OIL TERMINAL, INC.
v.
BNSF RAILWAY COMPANY

COMPLAINT UNDER 49 U.S.C. 11103(b) FOR THE INSTALLATION AND OPERATION
OF A SWITCH CONNECTION

ANSWER OF BNSF RAILWAY COMPANY

Defendant BNSF Railway Company ("**BNSF**") hereby answers the Complaint filed by Complainant Bell Oil Terminal, Inc. ("**Bell Oil**"), on October 6, 2009, in this proceeding.¹ To the extent BNSF does not specifically admit an allegation contained in the Complaint, that allegation is hereby denied. BNSF responds to the allegations in each separately numbered paragraph of the Complaint as follows:

I. BNSF admits that Bell Oil operates a terminal at 3741 South Pulaski Road, Chicago, IL for the receipt, storage and distribution of liquid asphalt. BNSF is without sufficient knowledge or information to admit or deny the remaining allegations in paragraph I.

¹ The Surface Transportation Board's ("Board") rules governing formal complaints provide that a complainant **must** inform the Board whether arbitration was considered. *See Arbitration – Resolving Disputes Subject To STB's Jurisdiction*, 6 S.T.B 232, 233 (2002). Bell Oil's Complaint is deficient in this regard and, accordingly, should be rejected. BNSF would have preferred handling this dispute under binding arbitration rules and is pursuing that option with Bell Oil. *See Exhibit 1.*

II. BNSF admits that it is a common carrier by railroad, that it is subject, in certain circumstances, to the jurisdiction of the Surface Transportation Board, and that it is subject to certain provisions of the Interstate Commerce Commission Termination Act, including 49 U.S.C. § 11103.

III. BNSF admits that Bell Oil submitted an application under Section 11103 for a switch connection at its Pulaski Terminal in Chicago, IL. BNSF further admits that Appendix 1 appears to be an accurate copy of the application. BNSF states by way of further response that the application fails to comply with the requirements of Section 11103.

IV. BNSF denies the allegations in Paragraph IV.

V. BNSF admits that representatives of BNSF met with officials of Bell Oil on November 13, 2008. BNSF denies the remaining allegations in Paragraph V. BNSF states by way of further response that BNSF never agreed to the construction of a private side track on BNSF property and never made a formal estimate of the cost of Bell Oil's proposal at the November 13th meeting. BNSF further admits that Appendix 2 appears to be an accurate copy of an e-mail from Mr. Wittich. BNSF states by way of further response that the e-mail message from Mr. Wittich, set forth in Appendix 2 of the Complaint, does not accurately describe the meeting on November 13, 2008.

VI. BNSF denies that allegations in Paragraph VI.

VII. BNSF admits that Bell Oil provided BNSF a print of a switch and private side track purportedly prepared by Mr. Ed Landreth, as "Plan C". BNSF denies the remaining allegations in paragraph VII. BNSF states by way of further response that "Plan C" has been rejected by BNSF as impracticable due to operating and service considerations.

VIII. BNSF is without sufficient knowledge or information to admit or deny Mr. Wittich's motivation in preparing the e-mail set forth in Appendix 2 of the Complaint and his purported decision to delay filing a complaint with the Board. BNSF denies the remaining allegations in paragraph VIII, including, without limitation, the allegations that BNSF agreed, at the November 13, 2008 meeting, to construct a switch connection and to lease Bell Oil BNSF land to construct the private side track. BNSF states by way of further response that, as previously noted, "Plan C" has been rejected by BNSF as impracticable due to operating and service considerations and, for valid business and operational reasons, BNSF has refused to allow Bell Oil to construct its private unloading tracks on BNSF property.

IX. BNSF denies that the estimate was an official estimate of BNSF or approved by BNSF.

X. BNSF admits having lawfully removed a siding which had been unused for approximately four (4) years as part of the Chicago Regional Environmental and Transportation ("CREATE") project in Chicago. BNSF further admits that prior to 2003, BNSF allowed Bell Oil to use the siding to unload Bell Oil cars. BNSF denies the implication that BNSF was lawfully obligated to allow Bell Oil to use the BNSF siding for unloading Bell Oil traffic. BNSF further denies the allegation that BNSF is lawfully obligated to construct a replacement track.

XI. BNSF denies that there was an agreement reached at the November 13, 2008 meeting. BNSF admits that no voluntary agreement regarding a switch connection has been reached by the parties.

XII. BNSF denies the allegations in Paragraph XII on grounds they present a totally distorted and one-sided description of BNSF's latest offer to Bell Oil. BNSF denies that its latest offer would cost more than 6 times the cost of Plan C. BNSF states by way of further response

that BNSF never made a cost estimate of Plan C because that plan was rejected as impracticable due to operating and service considerations. BNSF further denies the oft cited but totally unfounded allegation that BNSF agreed to Bell Oil's Plan C. BNSF admits that one part of its overall proposal would require Bell Oil to pay for the maintenance of a newly constructed track and facilities. BNSF states by way of further response that Bell Oil's selective description of BNSF's latest proposal is totally misleading.

XIII. BNSF denies the allegations in paragraph XIII. BNSF states by way of further response that BNSF's latest offer is fairly balanced between the parties: if Bell Oil furnishes sufficient business to justify the construction and maintenance of a switch connection, all of Bell Oil's advanced costs will be recouped by Bell Oil; if Bell Oil does not furnish sufficient business, a switch connection would not be justified under Section 11103(a).

XIV. BNSF denies the allegations in paragraph XIV. BNSF states by way of further response that its latest offer was designed to ensure that there will be sufficient business to justify the construction and maintenance of a switch connection, consistent with the requirements of Section 11103(a).

With respect to the paragraph entitled "CONCLUSION AND REQUESTED
RELIEF", BNSF denies that Bell Oil is entitled to any relief sought in this proceeding.

Respectfully submitted,



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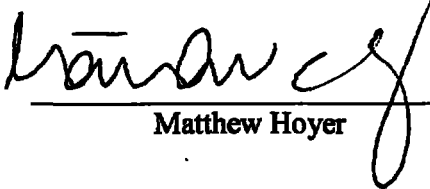
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Attorneys for:
BNSF Railway Company

Dated: October 26, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Answer of BNSF Railway Company to be served on counsel for Bell Oil Terminal, Inc., by first class mail this 26th day of October, 2009.



Matthew Hoyer

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October 26, 2009

BY FEDERAL EXPRESS

Thomas F. McFarland
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208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112

Re: STB Finance Docket No. 35302, Bell Oil Terminal, Inc. v. BNSF
Railway Company – Complaint Under 49 U.S.C. 11103(b) For The
Installation And Operation Of A Switch Connection

Dear Tom:

On Behalf of BNSF Railway Company ("BNSF"), we are today filing an Answer to the Complaint you filed on behalf of Bell Oil Terminal, Inc. ("Bell Oil") and a Motion to Dismiss the Complaint.

In your Complaint, you fail to state whether Bell Oil considered arbitration as an alternative to the formal complaint before the Surface Transportation Board and the parties have not discussed this alternative option. BNSF believes that this dispute can be more expeditiously and cost-effectively handled through arbitration, provided the parties can agree on the arbitrators. BNSF suggests a three-member arbitration panel with each party selecting an arbitrator and the two arbitrators selecting a neutral third arbitrator.

Please let me know as soon as possible whether Bell Oil is agreeable to pursuing this matter through arbitration.

Sincerely,



Karl Morell
Of Counsel